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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, ) No. CR 07-0765 MHP

Plaintiff, )

v. )

**DECLARATION OF RICHARD  
 COHEN**

MENDEL BEKER, )  
 a.k.a. Mikhail Lvovich, )  
 a.k.a. Michael Beker, )  
 ARIE PRILIK and )  
 NEWCON INTERNATIONAL LTD. )

Defendants. )

I, Richard Cohen, declare as follows:

1. I am a Trial Attorney for the U.S. Department of Justice, Antitrust Division and am assigned to the prosecution of the above-captioned case. I have reviewed documents received from TACOM related to the supply of night vision goggles required under the Battalion Set II (Bat II) Contract, and the September 28 and 29, 2010 interview notes of the interviews of Jeffery Bean. I submit this Declaration in support of the United States' Motion to Exclude Defense Witness Testimony.

2. On July 1, 2005, Raymond Stefanik, a project leader for the Night Vision and Electronic

1 Sensor Directorate ("NVESD"), sent an e-mail to McAleer. The e-mail is attached as Exhibit A.  
2 The e-mail summarized discussions NVESD personnel had with ATN representatives concerning  
3 two tests of ATN's goggles. The results of those tests were attached to the e-mail.

4 2. On March 8, 2005, TACOM's Derek McAleer received a letter from Byron Harding, the  
5 then President of NiViSys Industries LLC. The letter is attached to this Declaration as Exhibit B.  
6 The letter sets out NiViSys' relationship with the Bat II prime contractor, ITE, relating to a  
7 subcontract for the supply of goggles for the Bat II contract. The letter states why Harding  
8 believes ATN could not supply goggles that meet the Bat II contract quality requirements.  
9 TACOM's documents do not show any further contact between Harding and TACOM related to  
10 the quality of ATN's goggles.

11 3. On September 28, 2010, Jeffrey Bean was interviewed. The Interview notes are attached  
12 as Exhibit C. During his interview he stated that in 2005 he worked for TACOM as a contract  
13 specialist. His responsibilities included administration of the Bat II contract. He stated that he  
14 participated in the decision to test ATN's goggles to determine if they met the Bat II contract  
15 requirements. He saw the results of the two tests conducted by the NVESD on ATN's goggles.  
16 In late June and early July 2005 he participated in the decision to continue to accept ATN  
17 goggles for the Bat II contract, even though, because of those test results, there was a question as  
18 to whether ATN's goggles met the Bat II contract quality requirements.

19 4. Attached to this Declaration are true copies of the following documents cited in the  
20 United States Motion to Exclude Defense Witness Testimony:

21 Exhibit D: Hearing Transcript (Partial), United States v. Beker et. al., October 12, 2010.

22 Exhibit E: Hearing Transcript, United States v. Beker et. al., October 28, 2010.

23 Exhibit F: Hearing Transcript, United States v. Beker et. al., November 17, 2010.

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1 I have read the foregoing and declare under penalty of perjury that it is true and correct to the  
2 best of my knowledge and belief. This Declaration was executed in San Francisco on December  
3 17, 2010.

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5 /s/  
6 RICHARD COHEN  
7 Trial Attorney  
8 Department of Justice, Antitrust Division  
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